

Attorney or Party Name, Address, Telephone & FAX Numbers, and California State Bar Number RON BENDER (SBN 143364) LEVENE, NEALE, BENDER, RANKIN & BRILL LLP 1801 Avenue of the Stars, Suite 1120 Los Angeles, California 90067 (310) 229-1234 (310) 229-1244 (fax)	FOR COURT ONLY <div style="border: 1px solid black; padding: 5px; text-align: center;"> FILED MAR 12 2004 </div> <div style="text-align: right; font-size: small;"> CLERK OF COURT DISTRICT OF CALIFORNIA BY <i>BSA 2</i> Deputy Clerk </div>
UNITED STATES BANKRUPTCY COURT CENTRAL DISTRICT OF CALIFORNIA	
In re: GENE EWING aka Gene Ewing Sunkin dba Wrinkle Rich <div style="text-align: right;">Debtor(s).</div>	CASE NO.: LA 01-30129-ES

NOTICE OF SALE OF ESTATE PROPERTY

Sale Date: April 6, 2004	Time: 10:30 a.m.
Location: Court 1645, 255 East Temple Street, Los Angeles, CA 90012	

Type of Sale: ☒ Public ☐ Private Last date to file objections: March 23, 2004

Description of Property to be Sold: See Motion Attached.

Terms and Conditions of Sale: _____

Proposed Sale Price: _____

Overbid Procedure (If Any): _____

If property is to be sold free and clear of liens or other interests, list date, time and location of hearing:

Contact Person for Potential Bidders (include name, address, telephone, fax and/or e:mail address):

Date: March 12, 2004

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1 PLEASE TAKE NOTICE THAT a hearing will be held on April 6,
2 2004, at 10:30 a.m., before the Honorable Erithe Smith, United
3 States Bankruptcy Judge, in Courtroom "1645", Edward R. Roybal
4 Federal Building and Courthouse, 255 E. Temple Street, Los
5 Angeles, California, for the Court to consider the Motion filed
6 by Gregory Sterling, the Court appointed Examiner in this case,
7 to:

8
9 1. avoid all of the liens existing against the residence
10 located at 4946 Vanalden Avenue, Tarzana, California 91356 (the
11 "Home") which is owned by Gene Ewing, Chapter 11 Debtor and
12 Debtor in Possession (the "Debtor"), except for any real
13 property tax liens, other tax liens and the liens in favor of
14 Bank of America (and any other who will be paid out of the Sale
15 Proceeds Balance), as impairing the Debtor's homestead
16 exemption;

17 2. approve the sale of the Home free and clear of all
18 liens, claims and interests which are not otherwise avoided as
19 impairing the Debtor's homestead exemption upon the terms
20 described below in the annexed Memorandum of Points and
21 Authorities;

22 3. waive the ten-day waiting period set forth in
23 Bankruptcy Rule 6004(g); and

24 4. grant such other and further relief as the Court deems
25 just and proper.

1 The complete bases for this Motion are set forth in the
2 Memorandum of Points and Authorities and Declaration of Gregory
3 Sterling annexed hereto.

4 WHEREFORE, Gregory Sterling respectfully requests the Court
5 to (i) avoid all of the liens against the Home except for any
6 real property tax liens, other tax liens and the liens in favor
7 of Bank of America (and any other who will be paid out of the
8 Sale Proceeds Balance) as impairing the Debtor's homestead
9 exemption, (ii) approve the sale of the Home free and clear of
10 all liens, claims and interests which are not otherwise avoided
11 as impairing the Debtor's homestead exemption upon the terms
12 described above; (iii) waive the ten-day waiting period set
13 forth in Bankruptcy Rule 6004(g); and (iv) grant such other and
14 further relief as the Court deems just and proper.
15

16 Dated: March 12, 2004

LEVENE, NEALE, BENDER, RANKIN
& BRILL L.L.P.

17
18 By: 

19 RON BENDER
20 NELLWYN W. VOORHIES
21 JULIET Y. NOH
22 Attorneys for Chapter 11
23 Debtor and Debtor in
24 Possession
25

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. CASE BACKGROUND AND HOME SALE PROCESS**

3 Gene Ewing, Chapter 11 Debtor and Debtor in Possession (the
4 "Debtor"), commenced her bankruptcy case by filing a Voluntary
5 Petition under Chapter 11 of the Bankruptcy Code on June 29,
6 2001.

7 The Debtor is the owner of a home located at 4946 Vanalden
8 Avenue, Tarzana, California 91356 (the "Home")

9 While the Debtor remains a debtor-in-possession, at a
10 hearing held on July 11, 2002, the Court ordered the appointment
11 of an Examiner.

12 The Office of the United States Trustee (the "OUST")
13 appointed Gregory Sterling ("Sterling") to serve as the
14 Examiner. The order of the Court appointing Sterling as the
15 examiner provided that in addition to performing the duties
16 specified in Sections 1106(a)(3) and 1106(a)(4) of the
17 Bankruptcy Code, Sterling was to perform, among others, the
18 following duties:
19

20 i. Sterling was to determine the fair market value,
21 liquidation value and condition of the Home;

22 ii. Sterling was to determine the extent of liens
23 existing against the Home; and

24 iii. Sterling was to determine the estimated timing of
25 selling the Home.

1 Sterling's lien search of the Home and summary of those
2 liens and demands of the lien holders, copies of which are
3 attached as Exhibit "1" to the annexed Sterling Declaration,
4 evidenced the existence of 25 liens against the Home totaling
5 approximately \$1,954,183.59 as of February, 2003. As the Debtor
6 has not made any payments to any of those lien holders, the
7 amount of debt secured by those liens would undoubtedly have
8 grown substantially since February, 2003.
9

10 Other than the two senior liens of Bank of America ("BoFA")
11 securing an indebtedness which BoFA contended was in the amount
12 of approximately \$898,700 as of February, 2003, all of the other
13 liens against the Home were non-consensual liens obtained
14 through court judgements or governmental levies.

15 In order to provide her creditors with the comfort of
16 knowing that the Home will sell for the highest price possible
17 and in the most expeditious manner possible, the Debtor
18 previously entered into a stipulation with Sterling and her
19 bankruptcy counsel (the "Sale Stipulation") which was approved
20 by the Court and which, among other things, provided for
21 Sterling's role as examiner to be expanded to enable Sterling to
22 (i) enter into an employment agreement with Coldwell Banker as
23 the listing broker with respect to the sale of the Home (with
24 Ronald Goeschl to serve as lead agent), (ii) negotiate the terms
25 of the sale of the Home, and (iii) determine which price and

1 which buyer to accept, and (iv) execute all documents necessary
2 to consummate a sale of the Home to the highest and best buyer,
3 including an offer sheet, escrow instructions, a grant deed and
4 all other purchase and sale and closing documents. Pursuant to
5 the Sale Stipulation, Sterling is the only person who has the
6 power to execute any such documents with respect to the Home.
7 Also pursuant to the Sale Stipulation, the Debtor assigned
8 \$75,000 of her homestead exemption to Sterling and LNBRB.
9

10 Due to the uniqueness of the Home (as it sits on a private
11 lot of 1.3 acres), it was difficult to obtain comparable values
12 for the Home. At the time of the employment of Coldwell Banker
13 as the listing broker, Mr. Ronald Goeschl, the lead broker at
14 Coldwell Banker, stated that he believed that with the optimal
15 buyer, the Home could sell for as much as \$2.5 million or for as
16 low as \$1.9 million. Mr. Goeschl stated that the reason for the
17 possible wide variance in price is the existence of a
18 substantial amount of deferred maintenance and the potential
19 need for a particular buyer to incur a significant amount of
20 expense renovating, repairing or improving the Home.

21 In an effort to attempt to sell the Home for a price that
22 would both satisfy the Debtor (who believed the Home could
23 "easily" sell for \$3 million) and pay all of the Debtor's
24 creditors in full, Sterling caused the Home to be listed at an
25 original sale price of \$2,950,000 on June 20, 2003.

1 It quickly became obvious that the Home was simply not
2 worth the \$2,950,000 as there was little to no activity for the
3 Home notwithstanding the strong residential home sale market
4 which has been and remains in existence in Southern California.

5 While it was clear that the Home would not sell for
6 \$2,950,000, there was no way to determine what the optimal
7 listing price was due to the uniqueness of the Home and the lack
8 of comparable home sales. Sterling also wanted to make sure
9 that the Home sold for the highest price possible to make sure
10 that creditors received as much money as possible in this case.

12 On July 25, 2003, Sterling caused the listing price for the
13 Home to be reduced to \$2,450,000. Even with this substantial
14 reduction of \$500,000, there still was no activity for the Home.
15 On September 4, 2003, Sterling caused the listing price for the
16 Home to be reduced further to \$2,350,000; yet there was still no
17 activity for the Home. On September 30, 2003, Sterling caused
18 the listing price for the Home to be reduced further to
19 \$2,250,000; yet there was still no activity for the Home. On
20 October 17, 2003, Sterling caused the listing price for the Home
21 to be reduced further to \$1,950,000; yet there was still no
22 meaningful activity for the Home. On November 24, 2003,
23 Sterling caused the listing price for the Home to be reduced
24 further to \$1,890,000. While it became clear that the listing
25 price at \$1,890,000 was approaching the fair market value of the

1 Home and interest in the Home increased, no offers were made for
2 the Home at a listing price of \$1,890,000.

3 Recognizing that the Home needed to be sold and this
4 bankruptcy concluded in the near future and in an effort to
5 spark real interest in the Home, Sterling caused the listing
6 price for the Home to be reduced further to \$1,650,000 on
7 December 15, 2003. At this listing price, prospective buyers
8 started to show real interest in the Home for the first time.
9

10 On January 16, 2004, prospective buyers Adam and Rona
11 Greenberg made an offer of \$1,225,000 for the Home. After a
12 number of counter-offers were made back and forth, Sterling and
13 the Greenbergs ultimately reached an agreement on a purchase
14 price of \$1,500,000. Copies of all of the offers, counter-
15 offers and related documents are attached as Exhibit "2" to the
16 annexed Sterling Declaration.

17 **II. THE DEBTOR IS ENTITLED TO AVOID ALL LIENS THAT IMPAIR HER**
18 **\$150,000 HOMESTEAD EXEMPTION EXCEPT FOR POSSIBLY THE DISPUTED**
19 **TAX LIENS ALL OF WHICH THE DEBTOR DISPUTES**

20 Pursuant to Section 522(f)(1)(A) of the Bankruptcy Code,
21 the Debtor is entitled to avoid all judicial liens existing
22 against the Home to the extent such liens impair the \$150,000
23 homestead exemption that the Debtor is entitled to pursuant to
24 Section 704.730(a)(3) of the California Code of Civil Procedure
25 because the Debtor is older than 65 [see Section
704.730(a)(3)(A)].

1 Described in its simplest terms, Section 522(f)(1)(A) of
2 the Bankruptcy Code permits a debtor to wipe out the interest
3 that a judicial lien creditor has in particular property if the
4 debtor's interest in that property would be exempt but for the
5 existence of the creditor's lien or interest. See Collier on
6 Bankruptcy, 15th Edition Revised, Section 522.11, page 522-77.

7
8 The procedure for avoiding a judicial lien pursuant to
9 Section 522(f)(1)(A) of the Bankruptcy Code is set forth in
10 Bankruptcy Rule 4003(d). Unlike other avoiding power actions,
11 which are brought as adversary proceedings pursuant to
12 Bankruptcy Rule 7001, a proceeding to avoid a judicial lien
13 pursuant to Section 522(f)(1)(A) of the Bankruptcy Code is
14 brought as a motion subject to Bankruptcy Rule 9014 governing
15 contested matters. See Collier on Bankruptcy, 15th Edition
16 Revised, Section 522.11, page 522-77 and Bankruptcy Rule
17 4003(d).

18 Since the sale of the Home is subject to overbid, the exact
19 amount of closing costs will not be known until the sale of the
20 Home has closed, and the exact amount of the senior consensual
21 liens of Bank of America will not be known until the sale of the
22 Home has closed, there is no way for Sterling to know with
23 specificity which liens will need to be avoided due to their
24 impairment of the Debtor's homestead exemption.
25

1 A preliminary estimate of the distribution of the sale
2 proceeds is as follows:

3 ESTIMATED DISTRIBUTION OF PROCEEDS

4 Sales Price \$1,500,000

5 Less Brokers' Commission and Closing Costs (\$ 120,000)

6 Less Payoff of Bank of America's Two (\$1,100,000)
7 Consensual Deeds of Trust

8
9 Less Debtor's Homestead Exemption (\$ 150,000)

10 Estimated Sale Proceeds Available for \$130,000

11 Other Lienholders

12 Estimated Distribution to Lienholders (in order of lien recording
13 date):

14 Berg & Berg \$ 7,300¹

15 Jolee Buttons 10,000²

16 Jane Mainierd 6,200³

17 State of California 106,500⁴

18
19 TOTAL (\$130,000)

20
21 ¹ This is the most senior lien after Bank of America as the lien was recorded on November 24, 1992. Berg and Berg
22 asserted a demand in the amount of \$7,246 in February, 2003.

23 ² This is the next most senior lien as the lien was recorded on May 6, 1993. Jolee Buttons, Inc. asserted a demand
24 in the estimated amount of \$10,000 in February, 2003.

25 ³ This is the next most senior lien as the lien was recorded on December 31, 1993. Jane Mainierd asserted a demand
in the amount of \$6,111.82 in February, 2003.

⁴ The next three most senior liens were recorded by the State of California Employment Development Dept. (the
"Edd"); the first was recorded on January 4, 1994 and the next two were both recorded on January 28, 1994. The
EDD asserted demands in the respective amounts of \$13,524.81, \$120,603.50 and \$72,211.23 in February, 2003.

1 The following is a summary of all of the liens recorded
2 against the Home.

3 - The first two liens against the Home (reference
4 numbers 15 and 16) are in favor of Bank of America and will be
5 paid in full out of the sale proceeds.

6 - The next lien (reference number 18) does not assert
7 any claim.

8 - The next three liens (reference numbers 19, 20 and 21)
9 are in favor of Berg and Berg, Jolee Buttons, Inc. and Jane
10 Mainierd, respectively, each of whom will be paid in full out of
11 the sale proceeds, if the liens are found to be valid.

12 - The next three liens (reference numbers 22, 23 and 24)
13 are in favor of the EDD and are disputed in their entirety by
14 the Debtor as being owed by her ex-husband and/or a corporation,
15 not her, and therefore improperly recorded against the Home.

16 - The next lien (reference number 25) is in favor of
17 Grant & Weber and is a judgment lien which clearly can be
18 avoided by Section 522(f)(1)(A) of the Bankruptcy Code as
19 impairing the Debtor's homestead exemption.

20 - The next lien (reference number 26) is in favor of the
21 EDD and is disputed in its entirety by the Debtor as being owed
22 by her ex-husband and/or a corporation, not her, and therefore
23 improperly recorded against the Home.

24 - The next lien (reference number 27) is in favor of the
25 Internal Revenue Service and is probably in the amount of \$0 and

1 is disputed in its entirety by the Debtor as being owed by her
2 ex-husband and/or a corporation, not her, and therefore
3 improperly recorded against the Home.

4 - The next lien (reference number 27) is in favor of the
5 Internal Revenue Service and is probably in the amount of \$0 and
6 is disputed in its entirety by the Debtor as being owed by her
7 ex-husband and/or a corporation, not her, and therefore
8 improperly recorded against the Home.

9 - The next lien (reference number 28) is in favor of the
10 Internal Revenue Service which does not assert any claim and is
11 disputed in its entirety by the Debtor as being owed by her ex-
12 husband and/or a corporation, not her, and therefore improperly
13 recorded against the Home.

14 - The next ten liens (reference numbers 29-39), in favor
15 of Distribution by Air, Jim Hira, Ken Bitterolf, AZM, Inc. dba A
16 Plus Electric, Law Offices of William J. Glucksman, Farmer's
17 Insurance Coverage, TEC Financial Corp., Balmoral Financial
18 Corp., San Fernando Road Holdings, LLC and ITA Textile Corp. are
19 all judgment liens which clearly can be avoided by Section
20 522(f)(1)(A) of the Bankruptcy Code as impairing the Debtor's
21 homestead exemption.

22 - The next lien (reference number 40) is in favor of the
23 EDD and is disputed in its entirety by the Debtor as being owed
24 by her ex-husband and/or a corporation, not her, and therefore
25 improperly recorded against the Home.

1 - The final lien (reference number 41) is in favor of
2 A&M Financial Services, Inc. and is a judgment lien which
3 clearly can be avoided by Section 522(f)(1)(A) of the Bankruptcy
4 Code as impairing the Debtor's homestead exemption.

5 Sterling proposes to pay directly out of the Home sale
6 proceeds (i) all closing costs (including broker's commissions),
7 (ii) any outstanding real property tax liens owing to the County
8 tax authorities, (iii) all outstanding claims owing to Bank of
9 America pursuant to reference numbers 15 and 16 (to avoid the
10 continued accrual of interest and other charges), and (iv) the
11 Debtor's \$150,000 homestead exemption (with \$75,000 to the
12 Debtor and \$75,000 to Sterling and LNBRB split evenly in
13 accordance with the Sale Stipulation). Sterling proposes to
14 have the balance of the proceeds of the sale of the Home (the
15 "Sale Proceeds Balance") be held by Levene, Neale, Bender,
16 Rankin & Brill L.L.P. ("LNBRB"), counsel to the Debtor, in a
17 segregated interest bearing trust account pending any further
18 orders of the Court directing payment to creditors of the Debtor
19 which would occur after creditors assert claims and have them
20 allowed by the Court. LNBRB will not disburse any of the Sale
21 Proceeds Balance absent an order of the Court directing such
22 disbursement.
23

24 In order to avoid prejudicing any creditors, Sterling
25 further proposes that all liens which currently exist against

1 the Home will attach to the Sale Proceeds Balance with the same
2 validity, priority and extent as such liens currently exist
3 against the Home.

4 III. DISCUSSION

5 A. The Sale Should Be Approved Under Section 363 of the 6 Bankruptcy Code.

7 Section 363(b)(1) of the Bankruptcy Code provides that a
8 debtor in possession "after notice and a hearing, may use, sell
9 or lease, other than in the ordinary course of business,
10 property of the estate." 11 U.S.C. § 363(b)(1). As a general
11 matter, "a judge determining a Section 363(b) application
12 [should] find from the evidence presented before him at the
13 hearing a good business reason to grant such an application."
14 In re Lionel Corp., 722 F.2d 1-063, 1071 (2d Cir. 1983).
15

16 Certain factors pertinent to this analysis have been
17 articulated; specifically, the Court should consider whether:

18 (1) a sound business purpose justifies the sale;

19 (2) accurate and reasonable notice of the sale was
20 provided;

21 (3) the price to be paid is adequate, i.e., fair and
22 reasonable; and

23 (4) the sale is in good faith, i.e., there is an absence
24 of any lucrative deals with insiders.
25

1 In re Industrial Valley Refrig. and Air Cond. Supplies, Inc., 77
2 B.R. 15, 21 (Bankr. E.D. Pa. 1987); In re Wilde Horse
3 Enterprises, Inc., 136 B.R. 830, 841-2 (Bankr. C.D. Cal. 1991);
4 In re The Landing, 156 B.R. 246, 249 (Bankr. E.D. Mo. 1993); In
5 re George Walsh Chevrolet, Inc., 118 B.R. 99, 102 (Bankr. E.D.
6 Mo. 1990). The proposed sale of the Home by the Debtor in the
7 manner described in the Motion comports with each of these
8 requirements.

9
10 **1. Sound Business Purpose.**

11 The Ninth Circuit Bankruptcy Appellate Panel in Walter v.
12 Sunwest Bank (In re Walter), 83 B.R. 14, 19 (9th Cir. B.A.P.
13 1988) has adopted a flexible case by case test to determine
14 whether the business purpose for a proposed sale justifies
15 disposition of property of the estate under Section 363(b). In
16 Walter, the Bankruptcy Appellate Panel, adopting the reasoning
17 of the Fifth Circuit in In re Continental Air Lines, Inc., 70
18 F.2d 1223 (5th Cir. 1986) and the Second Circuit in In re Lionel
19 Corp., supra, articulated the standard to be applied under
20 Section 363(b) as follows:

21 "Whether the proffered business justification is
22 sufficient depends on the case. As the Second Circuit
23 held in Lionel, the bankruptcy judge should consider
24 all salient factors pertaining to the proceeding and,
accordingly, act to further the diverse interests of
the Debtor, creditors and equity holders, alike."

25 In re Walter, supra, 83 B.R. at 19-20, citing In re Continental
Air Lines, Inc., 780 F.2d 1223, 1226 (5th Cir. 1986).

1 It is clear that an immediate sale of the Home is in the
2 best interests of the Debtor's estate and merits the approval of
3 the Court. The Home has been marketed for many months, and the
4 current \$1.5 million offers is the best offer that has been
5 received, and the sale is subject to an advertised overbid. The
6 alternative to the sale of the Home is a conversion of the
7 Debtor's Chapter 11 case to Chapter 7 in which case Bank of
8 America would get automatic relief from the stay and foreclose
9 on the Home, leaving nothing for anybody else. Sterling
10 therefore contends that a sound business purpose exists for
11 approving and consummating the sale, thereby satisfying the
12 first requirement for a sale under Section 363(b).
13

14 **2. Accurate and Reasonable Notice.**

15 One Court has held that, in connection with a proposed sale
16 under Section 363 of the Bankruptcy Code, "four pieces of
17 information must be presented to the creditors. The notice
18 should: place all parties on notice that the debtor is selling
19 its business; disclose accurately the full terms of the sale;
20 explain the effect of the sale as terminating the debtor's
21 ability to continue in business; and explain why the proposed
22 price is reasonable and why the sale is in the best interest of
23 the estate." In re Delaware & Hudson Railway Co., 124 B.R. 169,
24 180 (D. Del. 1991).
25

1 Sterling has served a copy of the Motion and all related
2 pleadings upon all of the Debtor's creditors, including each of
3 the lien holders, the OUST and all parties that have requested
4 special notice, and Sterling has advertised the overbid
5 opportunity to make sure that the highest price possible is paid
6 for the Home. Sterling submits that the foregoing constitutes
7 accurate and reasonable notice of the Motion.

8
9 **3. Fair and Reasonable Price.**

10 In order to be approved under Section 363(b) of the
11 Bankruptcy Code, the purchase price must be fair and reasonable.
12 Coastal Indus. Inc. v. U.S. Internal Revenue Services (In re
13 Coastal Indus. Inc.), 63 B.R. 361, 368 (Bankr. N.D. Ohio 1986).
14 Several courts have held that "fair value" is given for property
15 in a bankruptcy sale when at least 75% of the appraised value of
16 such property is paid. See In re Carp, 894 B.R. 926, 933 (Bankr.
17 M.D. Pa. 1988); In re Abbots Dairies of Pennsylvania, Inc., 788
18 F.2d 143, 149 (3d Cir. 1986); Willemain v. Kivitz, 764 F.2d 1019
19 (4th Cir. 1985); In re Snyder, 74 B.R. 872, 878 (Bankr. E.D. Pa.
20 1987); In re The Seychelles, Partnership and Genius Corp. v.
21 Banyan Corp., 32 B.R. 708 (N.D. Tex. 1983). However, the Debtor
22 also realize that their "main responsibility, and the primary
23 concern of the bankruptcy court, is the maximization of the
24 value of the asset sold." In re Integrated Resources, Inc., 135
25

1 B.R. 746, 750 (Bankr. S.D.N.Y. 1992), *aff'd*, 147 B.R. 650
2 (S.D.N.Y. 1992).

3 As described above, the Home has been listed since June,
4 2003 by Sterling and a well qualified broker, both of whom had
5 every economic incentive to consummate a sale of the Home as
6 expeditiously as possible. As described above, they attempted
7 to sell the Home for much more money in an effort to get all of
8 the lien holders paid in full, but it became clear that the Home
9 is simply not worth that much money. It was only after the
10 listing price was reduced to \$1,650,000 on December 15, 2003
11 that prospective buyers started to show real interest in the
12 Home and offers were made. The accepted offer of \$1,500,000 is
13 the highest offer that has been made on the Home and it is
14 subject to overbid.
15

16 **4. Good Faith.**

17 With respect to the Debtor's conduct in conjunction with
18 the sale, the good faith requirement "focuses principally on the
19 element of special treatment of the Debtor's insiders in the
20 sale transaction." See In re Industrial Valley Refrig. and Air
21 Cond. Supplies, Inc., supra, 77 B.R. 15, 17. With respect to
22 the Debtor's conduct, the Court should consider whether there is
23 any evidence of "fraud, collusion between the purchaser and
24 other bidders, or the [Debtor], or an attempt to take grossly
25 unfair advantage of other bidders." In re Abbots Dairies,

1 supra, 788 F.2d at 147; In re Rock Indus. Mach. Corp., 572 F.2d
2 1195, 1998 (7th Cir. 1978); In re Wilde Horse Enterprises, Inc.,
3 supra, 136 B.R. at 842; In re Alpha Industries, Inc., 84 B.R.
4 703, 706 (Bankr. D. Mont. 1988).

5 Here, the good faith issue is without question. All
6 decisions related to the sale of the Home have been made by
7 Sterling, who has no interest in any buyer of the Home and who
8 is a highly qualified professional. The terms of the sale of
9 the Home were negotiated in good faith and on an arm's-length
10 basis. The Debtor is not the buyer of the Home and has no
11 interest in the buyer of the Home. Sterling's proposed sale of
12 the Home is therefore being done in good faith.
13

14 **B. Sections 363(f) and 506(d) of the Bankruptcy Code Permits**
15 **the Debtor to Sell the Home Free and Clear of Any Liens or**
16 **Interests Which Cannot Be Avoided as Impairing the Debtor's**
17 **Homestead Exemption.**

18 Section 363(f) of the Bankruptcy Code provides, in relevant
19 part, as follows:

20 "The Trustee may sell property under subsection (b) . . .
21 of this section free and clear of any interest in such
22 property of an entity other than the estate, only if --

23 (1) applicable non-bankruptcy law permits
the sale of such property free and clear of
such interest; . . .

24 (2) such entity consents;

25 (3) such interest is a lien and the price
at which such property is to be sold is
greater than the aggregate value of all
liens on such property;

- 1 (4) Such interest is in bona fide dispute;
2 or
3 (5) such entity could be compelled, in a
4 legal or equitable proceeding, to accept a
5 money satisfaction of such interest."

6 11 U.S.C. §363(f). Section 363(f) of the Bankruptcy Code is
7 drafted in the disjunctive. Thus, only one of the five
8 subsections of Section 363(f) needs to be satisfied in order for
9 a sale of property free and clear of liens to be permissible.

10 As described above, the two liens of Bank of America
11 (reference numbers 15 and 16) will be paid in full. All other
12 liens will either be paid in full or can clearly be avoided
13 because they impair the Debtor's homestead exemption except for
14 possibly the tax liens in favor of the EDD and the Internal
15 Revenue Service consisting of the following:

16 - The three liens (reference numbers 22, 23 and 24) in
17 favor of the EDD which are disputed in their entirety by the
18 Debtor as being owed by her ex-husband and/or a corporation, not
19 her, and therefore improperly recorded against the Home.

20 - The lien (reference number 26) in favor of the EDD
21 which is disputed in its entirety by the Debtor as being owed by
22 her ex-husband and/or a corporation, not her, and therefore
23 improperly recorded against the Home.

24 - The lien (reference number 27) in favor of the
25 Internal Revenue Service which is probably in the amount of \$0
and is disputed in its entirety by the Debtor as being owed by

1 her ex-husband and/or a corporation, not her, and therefore
2 improperly recorded against the Home.

3 - The lien (reference number 27) in favor of the
4 Internal Revenue Service which is probably in the amount of \$0
5 and is disputed in its entirety by the Debtor as being owed by
6 her ex-husband and/or a corporation, not her, and therefore
7 improperly recorded against the Home.

8 - The lien (reference number 28) in favor of the
9 Internal Revenue Service which does not assert any claim and is
10 disputed in its entirety by the Debtor as being owed by her ex-
11 husband and/or a corporation, not her, and therefore improperly
12 recorded against the Home.

13 - The lien (reference number 40) in favor of the EDD
14 which is disputed in its entirety by the Debtor as being owed by
15 her ex-husband and/or a corporation, not her, and therefore
16 improperly recorded against the Home.

17 Even though the sale price is not sufficient to pay all of
18 the foregoing lien holders the full amount of their liens,
19 Sterling submits that he should still be authorized to sell the
20 home free and clear of all liens, claims and interests pursuant
21 to Sections 363(f)(3), 363(f)(4) or 363(f)(5).

22 **1. Section 363(f)(3).**

23 There is a split of authority as to the requirement that
24 the sales price must be ". . . greater than the aggregate value
25 of all liens on such property" in Section 363(f)(3). Several

1 courts have construed "value" to mean the face amount of the
2 secured debt. Under that line of cases, to satisfy Section
3 363(f)(3), the selling price would have to exceed the total face
4 amount of the secured debt.⁵

5 Sterling submits that the far better reasoned line of cases
6 establishes that the meaning of "value" under Section 363(f)(3)
7 has the same meaning as in Section 506(a), which deals with the
8 valuation of secured interests.
9

10 These courts have held that a valuation of liens conducted
11 under Section 506(a) may be used to determine the "aggregate
12 value of all liens" under 11 U.S.C. Sec. 363(f)(3). In other
13 words, a sale should be approved where the proposed sales price
14 equals or exceeds the actual value of the liens as measured
15 under Section 506(a), and not the face amount of the secured
16 debt. In re Collins, 180 B.R. 447 (Bankr. E.D. Va. 1995); In re
17 Milford Group, Inc., 150 B.R. 904, 906 (Bankr. M.D. Pa. 1992);
18 In re Terrace Gardens Park Partnership, 96 B.R. 707 (Bankr. W.D.
19 Tex. 1989); In re Beker Industries Corp., 63 B.R. 474 (Bankr.
20 S.D.N.Y. 1986); Matter of Rouse, 54 B.R. 31 (Bankr.W.D.Mo.1985);
21 In re Hatfield Homes, Inc., 30 B.R. 353 (Bankr. E.D. Pa. 1983).
22 All of these cases held that the measure of the value of liens
23

24 ⁵ See, e.g., Riverside Inv. Partnership, 674 F.2d 634, 640 (7th Cir.
1982)(case under the Bankruptcy Act); In re Terrace Chalet Apts., 159
25 B.R. 821 (N.D. Ill. 1993); In re Heine, 141 B.R. 185, 189 (Bankr.
D.S.D. 1992).

1 under Section 365(f)(3) must be measured in the context of
2 Section 506(a).

3 Sterling submits that this second line of cases is the far
4 better approach, for the reasons explained immediately below.
5 The term "value" has been interpreted by the United States
6 Supreme Court to have the same meaning in Bankruptcy Code
7 Sections 363(1) and (2) - relating to adequate protection - as
8 in Section 506(a).⁶

9
10 The concept of adequate protection pervades the sale
11 provisions of Section 363(f). As stated by one court:

12 "Sections 361 - 364 all address the treatment of
13 secured claims in a bankruptcy context. All four
14 sections employ the common concept of adequate
15 protection as the touchstone for whether a Debtor's
16 proposed action should be approved. Adequate
17 protection in turn focuses on the value of the
18 collateral securing the claim. So long as a
19 creditor's interest is adequately protected, the
20 debtor is permitted to sell property of the estate.
21 11 U.S.C. § 363(e). It makes no sense to read into
22 Section 363(f)(3) a restriction inconsistent with the
23 adequate protection scheme which pervades both Section
24 363 and the rest of the Code, just because the sale is
25 free of liens, especially as the commonly accepted
method of adequately protecting a secured creditor
when a sale is authorized under Section 363(f) is to
order the liens to attached to the proceeds of the
sale."

22 In re Terrace Gardens Park Partnership, 96 B.R. at 713
23 (footnotes omitted).

24
25 ⁶ United Savings Assoc. of Texas v. Timbers of Inwood Forest Assocs.,
484 U.S. 365, 108 S.Ct. 626, 630, 98 L.Ed.2d 740 (1988).

1 Further, the cases which utilize a valuation under Section
2 506(a) to permit a sale under Section 363(f)(3) generally
3 require that the court look to the circumstances accompanying
4 the sale to determine whether to approve the sale. This offers
5 further protection to secured creditors, while permitting a sale
6 which is in the best interests of the estate to proceed. These
7 special circumstances include whether the purchase price is the
8 best obtainable,⁷ whether the objection by an obstinate
9 undersecured creditor to the sale unfairly burdens the estate
10 and its other creditors,⁸ whether a sale outside of a plan of
11 reorganization is compelled under the circumstances, and most
12 importantly, whether the sale is in the best interests of the
13 estate and its creditors.⁹

15 Sterling submits that the facts of this case demonstrates
16 that the Court should approve Sterling's proposed sale of the
17 Home under Section 363(f)(3) of the Bankruptcy Code at this time
18 at a price of not less than \$1.5 million, with or without the
19 consent of each of the lien holders, because, under the
20 reasoning provided above, the sale price will be higher than the
21

22 ⁷⁵ Beker, 63 B.R. at 477.

23 ⁸ Id. at 478; Terrace Gardens, 96 B.R. at 707 (stating that another
24 interpretation of "value" under Section 363(f)(3) would allow "an
25 undersecured creditor to obstinately block an otherwise sensible
sale).

⁹ Collins, 180 B.R. at 451.

1 value of the liens, and the circumstances of this case provide
2 compelling reasons for the Court to approve the sale.

3 a) The Purchase Price for the Home Will Be Greater
4 than the Aggregate Value of the Liens as
5 Determined Under Section 506(a) of the Bankruptcy
6 Code.

7 When determining the value of a lien under § 506(a), value
8 is determined in light of the valuation's purpose, and the
9 proposed disposition of the property. § 506(a) states in
pertinent part:

10 "An allowed claim of a creditor secured by a lien on
11 property in which the estate has an interest ... is a
12 secured claim to the extent of the value of such
13 creditor's interest in the estate's interest in such
14 property. . . . Such value shall be determined in
15 light of the purpose of the valuation and of the
16 proposed disposition or use of such property. . . .
17 Where there is an actual sale, such "is conclusive
18 evidence of the property's value."¹⁰

19 As stated by Collier on Bankruptcy:

20 "If an actual sale (or equivalent disposition) is to
21 occur, the value of the collateral should be based on
22 the consideration to be received by the estate in
23 connection with the sale, provided that the terms of
24 the sale are fair and were arrived at on an arm's-
25 length basis."¹¹

21 ¹⁰ In re Alpine Group, 151 B.R. 931, 935 (9th Cir. BAP 1993); see also,
22 Associates Commercial Corp. v. Rash, 520 U.S. 953, 960, 138 L.Ed.2d
23 148, 117 S.Ct. 1879, 1883 (1997) (amount of secured claim under
24 § 506(a) "is the price a willing buyer in the Debtor's trade,
25 business, or situation would pay to obtain like property from a
willing seller"); Ford Motor Credit v. Dobbins, 35 F.3d 860, 870 (4th
Cir. 1994) (actual sales price determinative of value under § 506).

¹¹ L. King, Collier on Bankruptcy, ¶ 506.03[6][b] at 506-40.

1 Here, the purchase price paid for the Home will be the
2 highest purchase price offered for the Home, which, by
3 definition, will dictate the fair market value of the Home.
4 This, in turn, will determine the value of all of the liens
5 against the Home pursuant to 11 U.S.C. §506(a).

6 Although at times courts will conduct a separate valuation
7 hearing to determine the value of liens under § 506(a), courts
8 have held that in the context of a Section 363(f) sale, there is
9 no need to hold a further valuation hearing which may
10 unnecessarily delay the sale.¹²

12 Since the proposed sale price of \$1.5 million was obtained
13 after many months of marketing the Home and the sale price is
14 subject to overbid, it is clear that the ultimate sale price
15 will be equal to the fair market value of the Home.

16 The Court therefore has the authority to approve Sterling's
17 proposed sale of the Home free and clear of all liens pursuant
18 to Section 363(f)(3) of the Bankruptcy Code.

19 ///

20 ///

22
23 ¹² Collins, supra, 180 B.R. at 452 n.7, citing In re Oneida Lake
24 Development, 114 B.R. 352. 357 (Bankr. N.D.N.Y. 1990) ("[C]ourts have
25 dispensed with evidentiary hearings in instances where such hearings
would only serve to significantly delay a sale of property and where
the court finds that the price is the best that could be attained for
the property.")

1 b) The Court Should Approve Sterling's Proposed Sale
2 of the Home Because of the Compelling
3 Circumstances Surrounding the Sale.

4 The compelling circumstances surrounding Sterling's
5 proposed sale are evident and are the best way to maximize the
6 distribution to creditors in this case. Sterling has been
7 involved in this case in an effort to authenticate the Debtor's
8 painting and to sell the Home for nearly 1.5 years, during which
9 time he has expended many thousands of dollars of his own money
10 and has not been paid any money by the Debtor or her estate.
11 Creditors have not been paid any money and the amount of the
12 senior indebtedness owing against the Home to Bank of America
13 simply continues to increase on a daily basis.

14 Nothing would be served by not selling the Home as the
15 Debtor's Chapter 11 case will simply be converted to Chapter 7
16 at which point Bank of America will assuredly obtain relief from
17 the automatic stay and foreclose on the Home leaving no value
18 for any other creditor and no value for the Debtor, Sterling or
19 LNBRB.

20 Moreover, it is clear from Section 506(d) that adversary
21 proceedings could be brought to void all such tax liens but that
22 would cause a significant delay and expense that would simply
23 end with the identical result but risk losing the existing buyer
24 during the process.
25

1 In summary, it is clear that Sterling's proposed sale of
2 the Home is the best possible result for this case. In re
3 Oneida Lake Development, Inc., 114 B.R. 352, 355 (Bankr.
4 N.D.N.Y. 1990) (approving sale under Section 363(f)(3) using
5 valuation under Section 506(a), citing Lionel).

6 **2. Section 363(f)(4).**

7 Section 363(f)(4) of the Bankruptcy Code permits a sale of
8 property free and clear of liens if the liens are the subject of
9 a bona fide dispute. The purpose of Section 363(f)(4) is to
10 permit property of the estate to be sold free and clear of
11 interests that are disputed by the representative of the estate
12 so that liquidation of the estate's assets need not be delayed
13 while such disputes are being litigated. See, generally, 3
14 Lawrence P. King, Collier on Bankruptcy ¶ 363.06 (15th ed.
15 rev.1998). Typically, the proceeds of sale are held subject to
16 the disputed interest and then distributed as dictated by the
17 resolution of the dispute; such procedure preserves all parties'
18 rights by simply transferring interests from property to dollars
19 that represent its value. See also, In re Clark, 266 B.R. 163
20 (9th Cir. B.A.P. 2001).

22 For the reasons described above, the Debtor disputes owing
23 any of the tax liens and those are the only liens that possibly
24 cannot be avoided because they impair the Debtor's homestead
25 exemption. Sterling therefore submits that he could sell the

1 Home free and clear of all such disputed tax liens with such
2 disputed tax liens to attach to the Sale Proceeds Balance.

3 **3. Section 363(f)(5).**

4 Section 363(f)(5) of the Bankruptcy Code permits a sale of
5 property free and clear of interests if those entities could be
6 compelled, in a legal or equitable proceeding, to accept a money
7 satisfaction of such interest.

8 a) The Debtor's Tax Lien Holders Could Be Compelled
9 to Accept a Money Satisfaction Through Cram-Down
10 Under Section 1129(b)(2); therefore, Sterling's
11 Proposed Sale of the Home Should Be Approved
12 Under Section 363(f)(5).

13 The ability of a debtor to "cram-down" a secured creditor
14 under 11 U.S.C. Sec. 1129(b)(1) and (2) constitutes a "legal
15 proceeding" pursuant to which a secured creditor could be
16 compelled to accept a money satisfaction. See, In re Grand
17 Slam, U.S.A. Inc., 178 B.R. 460, 462 (E.D. Mich. 1995);
18 1129(b)(2)(A). In re Hunt Energy Co., Inc., 48 B.R. 472, 485
19 (Bankr. N.D. Ohio, E.D 1985).

20 Section 1129(b)(2)(A) allows cram-down of a secured
21 creditor, provided that it receives "the indubitable equivalent"
22 of its claim. A debtor can cram down a secured creditor if it
23 demonstrates (1) the debtor is not unfairly discriminating
24 against the secured creditor, 11 U.S.C. § 1129(b)(1); (2) it is
25 acting in good faith, 11 U.S.C. § 1129(a)(3)-(b)(1); and (3) the
secured creditor is receiving the actual value of its claim. 11

1 U.S.C. § 1129(b)(2)(A)(i)(II), 11 U.S.C. § 1129(b)(2)(A)(iii).
2 See also In re Sandy Ridge Dev. Corp., 881 F.2d 1346, 1350 (5th
3 Cir.1989) (holding that "indubitable equivalent" of a secured
4 creditor's interest is the actual value of the claim).

5 In the above-cited Hunt decision, the court found that a
6 lien which attaches to the proceeds of a sale would necessarily
7 be reduced by subsequent valuation at a hearing under Section
8 506(a) to meet the "indubitable equivalence" requirements of
9 section 1129(b)(2)(A). Once Section 1129(b)(2)(A) is satisfied,
10 the lienholder would be compelled through the cram-down process
11 to accept such money satisfaction as dictated by the cram-down
12 provisions. Id.

14 All of the above requirements for cram down are met in this
15 case. As set forth above, Sterling's proposed sale of the Home
16 is being conducted in good faith and in a manner designed to
17 insure that the highest price possible is paid for the Home.
18 All creditors are being treated fairly and in accordance with
19 their respective lien priorities, so there is no unfair
20 discrimination present in the proposed sale. Finally, all lien
21 holders will by definition be receiving the actual value of
22 their claim as measured by Section 506(a). Therefore,
23 Sterling's proposed sale of the Home should be approved under
24 363(f)(5).
25

1 b) Equitable Considerations Support Approval of
2 Sterling's Proposed Sale of the Home Under
3 Section 363(f)(5).

4 Equitable factors may compel approval of a sale free and
5 clear under Section 363(f)(5), even though secured creditors are
6 not paid in full. See, e.g., In re Hunt Energy Co., Inc., 48
7 B.R. at 472; In re Hatfield Homes, Inc., 30 B.R. at 353. The
8 equitable considerations in this case are clear and point
9 heavily towards approving a sale of the Home in the manner
10 requested by Sterling as it will insure that the Home is sold
11 for the highest price possible to avoid the continued accrual of
12 interest and other charges to Bank of America and to maximize
13 the return to creditors by avoiding what would otherwise be a
14 certain foreclosure by Bank of America in a Chapter 7 bankruptcy
15 of the Debtor.

16 C. Sterling Requests the Court to Waive the Ten-Day Waiting
17 Periods Set Forth in Bankruptcy Rules 6004(g).

18 Bankruptcy Rule 6004(g) provides that an order authorizing
19 the use, sale or lease of property other than cash collateral is
20 stayed until the expiration of 10 days after entry of the order,
21 unless the Court orders otherwise. In order to enable Sterling
22 to consummate the sale of the Home immediately, Sterling
23 requests the Court to waive the ten-day waiting period in this
24 case and to permit Sterling to walk-through the order so that
25 the sale of the Home can be consummated immediately.

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IV. CONCLUSION

Based upon all of the foregoing, Sterling respectfully requests the Court to (i) avoid all of the liens against the Home except for any real property tax liens, other tax liens and the liens in favor of Bank of America (and any other who will be paid out of the Sale Proceeds Balance) as impairing the Debtor's homestead exemption, (ii) approve the sale of the Home free and clear of all liens, claims and interests which are not otherwise avoided as impairing the Debtor's homestead exemption upon the terms described above; (iii) waive the ten-day waiting period set forth in Bankruptcy Rule 6004(g); and (iv) grant such other and further relief as the Court deems just and proper.

Dated: March 12, 2004

LEVENE, NEALE, BENDER, RANKIN
& BRILL L.L.P.

By: _____


RON BENDER
NELLWYN W. VOORHIES
JULIET Y. NOH
Attorneys for Chapter 11
Debtor and Debtor in
Possession

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DECLARATION OF GREGORY STERLING

I, GREGORY STERLING, HEREBY DECLARE AS FOLLOWS:

1. I have personal knowledge of the facts set forth below and, if called to testify, would and could competently testify thereto.

2. I have been appointed as an examiner in the Chapter 11 bankruptcy case of Gene Ewing (the "Debtor"), Case Number LA 01-30129-ES, pending in the United States Bankruptcy Court for the Central District of California, Los Angeles Division.

3. The Debtor commenced her bankruptcy case by filing a Voluntary Petition under Chapter 11 of the Bankruptcy Code on June 29, 2001.

4. The Debtor is the owner of a home located at 4946 Vanalden Avenue, Tarzana, California 91356 (the "Home")

5. While the Debtor remains a debtor-in-possession, at a hearing held on July 11, 2002, the Court ordered the appointment of an Examiner.

6. The Office of the United States Trustee (the "OUST") appointed me to serve as the Examiner. The order of the Court appointing me as the examiner provided that in addition to performing the duties specified in Sections 1106(a)(3) and 1106(a)(4) of the Bankruptcy Code, I was to perform, among others, the following duties:

1 i. I was to determine the fair market value,
2 liquidation value and condition of the Home;

3 ii. I was to determine the extent of liens existing
4 against the Home; and

5 iii. I was to determine the estimated timing of
6 selling the Home.

7
8 7. The lien search I conducted of the Home and summary of
9 those liens and demands of the lien holders, copies of which are
10 attached hereto as Exhibit "1", evidenced the existence of 25
11 liens against the Home totaling approximately \$1,954,183.59 as
12 of February, 2003. As the Debtor has not made any payments to
13 any of those lien holders, the amount of debt secured by those
14 liens would undoubtedly have grown substantially since February,
15 2003.

16 8. Other than the two senior liens of Bank of America
17 ("BoFA") securing an indebtedness which BoFA contended was in
18 the amount of approximately \$898,700 as of February, 2003, all
19 of the other liens against the Home were non-consensual liens
20 obtained through court judgments or governmental levies.

21 9. In order to provide her creditors with the comfort of
22 knowing that the Home will sell for the highest price possible
23 and in the most expeditious manner possible, the Debtor
24 previously entered into a stipulation with me and her bankruptcy
25 counsel (the "Sale Stipulation") which was approved by the Court

1 and which, among other things, provided for my role as examiner
2 to be expanded to enable me to (i) enter into an employment
3 agreement with Coldwell Banker as the listing broker with
4 respect to the sale of the Home (with Ronald Goeschl to serve as
5 lead agent), (ii) negotiate the terms of the sale of the Home,
6 and (iii) determine which price and which buyer to accept, and
7 (iv) execute all documents necessary to consummate a sale of the
8 Home to the highest and best buyer, including an offer sheet,
9 escrow instructions, a grant deed and all other purchase and
10 sale and closing documents. Pursuant to the Sale Stipulation, I
11 am the only person who has the power to execute any such
12 documents with respect to the Home. Also pursuant to the Sale
13 Stipulation, the Debtor assigned \$75,000 of her homestead
14 exemption to me and LNBRB.
15

16 10. Due to the uniqueness of the Home (as it sits on a
17 private lot of 1.3 acres), it was difficult to obtain comparable
18 values for the Home. At the time of the employment of Coldwell
19 Banker as the listing broker, Mr. Ronald Goeschl, the lead
20 broker at Coldwell Banker, stated that he believed that with the
21 optimal buyer, the Home could sell for as much as \$2.5 million
22 or for as low as \$1.9 million. Mr. Goeschl stated that the
23 reason for the possible wide variance in price is the existence
24 of a substantial amount of deferred maintenance and the
25

1 potential need for a particular buyer to incur a significant
2 amount of expense renovating, repairing or improving the Home.

3 11. In an effort to attempt to sell the Home for a price
4 that would both satisfy the Debtor (who believed the Home could
5 "easily" sell for \$3 million) and pay all of the Debtor's
6 creditors in full, I caused the Home to be listed at an original
7 sale price of \$2,950,000 on June 20, 2003.

8 12. It quickly became obvious that the Home was simply not
9 worth the \$2,950,000 as there was little to no activity for the
10 Home notwithstanding the strong residential home sale market
11 which has been and remains in existence in Southern California.

12 13. While it was clear that the Home would not sell for
13 \$2,950,000, there was no way to determine what the optimal
14 listing price was due to the uniqueness of the Home and the lack
15 of comparable home sales. I also wanted to make sure that the
16 Home sold for the highest price possible to make sure that
17 creditors received as much money as possible in this case.

18 14. On July 25, 2003, I caused the listing price for the
19 Home to be reduced to \$2,450,000. Even with this substantial
20 reduction of \$500,000, there still was no activity for the Home.
21 On September 4, 2003, I caused the listing price for the Home to
22 be reduced further to \$2,350,000; yet there was still no
23 activity for the Home. On September 30, 2003, I caused the
24 listing price for the Home to be reduced further to \$2,250,000;
25

1 yet there was still no activity for the Home. On October 17,
2 2003, I caused the listing price for the Home to be reduced
3 further to \$1,950,000; yet there was still no meaningful
4 activity for the Home. On November 24, 2003, I caused the
5 listing price for the Home to be reduced further to \$1,890,000.
6 While it became clear that the listing price at \$1,890,000 was
7 approaching the fair market value of the Home and interest in
8 the Home increased, no offers were made for the Home at a
9 listing price of \$1,890,000.
10

11 15. Recognizing that the Home needed to be sold and this
12 bankruptcy concluded in the near future and in an effort to
13 spark real interest in the Home, I caused the listing price for
14 the Home to be reduced further to \$1,650,000 on December 15,
15 2003. At this listing price, prospective buyers started to show
16 real interest in the Home for the first time.

17 16. On January 16, 2004, prospective buyers Adam and Rona
18 Greenberg made an offer of \$1,225,000 for the Home. After a
19 number of counter-offers were made back and forth, the
20 Greenbergs and I ultimately reached an agreement on a purchase
21 price of \$1,500,000. Copies of all of the offers, counter-
22 offers and related documents are attached hereto as Exhibit "2".
23

24 17. Since the sale of the Home is subject to overbid, the
25 exact amount of closing costs will not be known until the sale
of the Home has closed, and the exact amount of the senior

consensual liens of Bank of America will not be known until the sale of the Home has closed, there is no way for me to know with specificity which liens will need to be avoided due to their impairment of the Debtor's homestead exemption.

18. My preliminary estimate of the distribution of the sale proceeds is as follows:

ESTIMATED DISTRIBUTION OF PROCEEDS

Sales Price	\$1,500,000
Less Brokers' Commission and Closing Costs	(\$ 120,000)
Less Payoff of Bank of America's Two Consensual Deeds of Trust	(\$1,100,000)
Less Debtor's Homestead Exemption	(\$ 150,000)
Estimated Sale Proceeds Available for Other Lienholders	\$130,000

19. An estimated distribution to lien holders (in order of lien recording date) is as follows:

Berg & Berg	\$ 7,300 ¹
Jolee Buttons	10,000 ²
Jane Mainierd	6,200 ³

¹ This is the most senior lien after Bank of America as the lien was recorded on November 24, 1992. Berg and Berg asserted a demand in the amount of \$7,246 in February, 2003.

² This is the next most senior lien as the lien was recorded on May 6, 1993. Jolee Buttons, Inc. asserted a demand in the estimated amount of \$10,000 in February, 2003.

State of California 106,500⁴

TOTAL

(\$130,000)

20. The following is a summary of all of the liens recorded against the Home.

- The first two liens against the Home (reference numbers 15 and 16) are in favor of Bank of America and will be paid in full out of the sale proceeds.

- The next lien (reference number 18) does not assert any claim.

- The next three liens (reference numbers 19, 20 and 21) are in favor of Berg and Berg, Jolee Buttons, Inc. and Jane Mainierd, respectively, each of whom will be paid in full out of the sale proceeds, if the liens are found to be valid.

- The next three liens (reference numbers 22, 23 and 24) are in favor of the EDD and are disputed in their entirety by the Debtor as being owed by her ex-husband and/or a corporation, not her, and therefore improperly recorded against the Home.

- The next lien (reference number 25) is in favor of Grant & Weber and is a judgment lien which clearly can be avoided by Section 522(f)(1)(A) of the Bankruptcy Code as impairing the Debtor's homestead exemption.

³ This is the next most senior lien as the lien was recorded on December 31, 1993. Jane Mainierd asserted a demand in the amount of \$6,111.82 in February, 2003.

⁴ The next three most senior liens were recorded by the State of California Employment Development Dept. (the "Edd"); the first was recorded on January 4, 1994 and the next two were both recorded on January 28, 1994. The EDD asserted demands in the respective amounts of \$13,524.81, \$120,603.50 and \$72,211.23 in February, 2003.

1 - The next lien (reference number 26) is in favor of the
2 EDD and is disputed in its entirety by the Debtor as being owed
3 by her ex-husband and/or a corporation, not her, and therefore
4 improperly recorded against the Home.

5 - The next lien (reference number 27) is in favor of the
6 Internal Revenue Service and is probably in the amount of \$0 and
7 is disputed in its entirety by the Debtor as being owed by her
8 ex-husband and/or a corporation, not her, and therefore
9 improperly recorded against the Home.

10 - The next lien (reference number 27) is in favor of the
11 Internal Revenue Service and is probably in the amount of \$0 and
12 is disputed in its entirety by the Debtor as being owed by her
13 ex-husband and/or a corporation, not her, and therefore
14 improperly recorded against the Home.

15 - The next lien (reference number 28) is in favor of the
16 Internal Revenue Service which does not assert any claim and is
17 disputed in its entirety by the Debtor as being owed by her ex-
18 husband and/or a corporation, not her, and therefore improperly
19 recorded against the Home.

20 - The next ten liens (reference numbers 29-39), in favor
21 of Distribution by Air, Jim Hira, Ken Bitterolf, AZM, Inc. dba A
22 Plus Electric, Law Offices of William J. Glucksman, Farmer's
23 Insurance Coverage, TEC Financial Corp., Balmoral Financial
24 Corp., San Fernando Road Holdings, LLC and ITA Textile Corp. are
25 all judgment liens which clearly can be avoided by Section

1 522(f)(1)(A) of the Bankruptcy Code as impairing the Debtor's
2 homestead exemption.

3 - The next lien (reference number 40) is in favor of the
4 EDD and is disputed in its entirety by the Debtor as being owed
5 by her ex-husband and/or a corporation, not her, and therefore
6 improperly recorded against the Home.

7 - The final lien (reference number 41) is in favor of
8 A&M Financial Services, Inc. and is a judgment lien which
9 clearly can be avoided by Section 522(f)(1)(A) of the Bankruptcy
10 Code as impairing the Debtor's homestead exemption.

11 21. I propose to cause to be paid directly out of the Home
12 sale proceeds (i) all closing costs (including broker's
13 commissions), (ii) any outstanding real property tax liens owing
14 to the County tax authorities, (iii) all outstanding claims
15 owing to Bank of America pursuant to reference numbers 15 and 16
16 (to avoid the continued accrual of interest and other charges),
17 and (iv) the Debtor's \$150,000 homestead exemption (with \$75,000
18 to the Debtor and \$75,000 to me and LNBRB split evenly in
19 accordance with the Sale Stipulation).

20
21 22. I propose to have the balance of the proceeds of the
22 sale of the Home (the "Sale Proceeds Balance") be held by
23 Levene, Neale, Bender, Rankin & Brill L.L.P. ("LNBRB"), counsel
24 to the Debtor, in a segregated interest bearing trust account
25 pending any further orders of the Court directing payment to

1 creditors of the Debtor which would occur after creditors assert
2 claims and have them allowed by the Court. LNBRB will not
3 disburse any of the Sale Proceeds Balance absent an order of the
4 Court directing such disbursement.

5 23. In order to avoid prejudicing any creditors, I further
6 propose that all liens which currently exist against the Home
7 will attach to the Sale Proceeds Balance with the same validity,
8 priority and extent as such liens currently exist against the
9 Home.
10

11 24. It is clear to me that an immediate sale of the Home
12 is in the best interests of the Debtor's estate and merits the
13 approval of the Court. The Home has been marketed for many
14 months, and the current \$1.5 million offers is the best offer
15 that has been received, and the sale is subject to an advertised
16 overbid. The alternative to the sale of the Home is a
17 conversion of the Debtor's Chapter 11 case to Chapter 7 in which
18 case Bank of America would get automatic relief from the stay
19 and foreclose on the Home, leaving nothing for anybody else. I
20 therefore contend that a sound business purpose exists for
21 approving and consummating the sale of the Home as proposed.
22

23 25. I understand that a copy of the Motion and all related
24 pleadings will be served upon all of the Debtor's creditors,
25 including each of the lien holders, the OUST and all parties
that have requested special notice. In addition, I will cause

1 to be advertised the overbid opportunity to make sure that the
2 highest price possible is paid for the Home. Prospective
3 overbidders will be advised that they will need to appear at the
4 Bankruptcy Court hearing with non-refundable (if they are the
5 winning bidder) cashier's checks in the amount of 3% of the
6 winning bid with a minimum overbid of \$25,000. I submit that
7 the foregoing constitutes accurate and reasonable notice of the
8 Motion.
9

10 26. As described above, the Home has been listed since
11 June, 2003 by me and a well qualified broker, both of whom had
12 every economic incentive to consummate a sale of the Home as
13 expeditiously as possible. As described above, we attempted to
14 sell the Home for much more money in an effort to get all of the
15 lien holders paid in full, but it became clear that the Home is
16 simply not worth that much money. It was only after the listing
17 price was reduced to \$1,650,000 on December 15, 2003 that
18 prospective buyers started to show real interest in the Home and
19 offers were made. The accepted offer of \$1,500,000 is the
20 highest offer that has been made on the Home and it is subject
21 to overbid.

22 27. All decisions related to the sale of the Home have
23 been made by me, and I have no interest in any buyer of the
24 Home, and I am a highly qualified real estate professional. The
25 terms of the sale of the Home were negotiated in good faith and

1 on an arm's-length basis. The Debtor is not the buyer of the
2 Home and has no interest in the buyer of the Home. I therefore
3 submit that the proposed sale of the Home is being done in good
4 faith.

5 28. As described above, the two liens of Bank of America
6 (reference numbers 15 and 16) will be paid in full. All other
7 liens will either be paid in full or can clearly be avoided
8 because they impair the Debtor's homestead exemption except for
9 possibly the tax liens in favor of the EDD and the Internal
10 Revenue Service consisting of the following:

11 - The three liens (reference numbers 22, 23 and 24) in
12 favor of the EDD which are disputed in their entirety by the
13 Debtor as being owed by her ex-husband and/or a corporation, not
14 her, and therefore improperly recorded against the Home.

15 - The lien (reference number 26) in favor of the EDD
16 which is disputed in its entirety by the Debtor as being owed by
17 her ex-husband and/or a corporation, not her, and therefore
18 improperly recorded against the Home.

19 - The lien (reference number 27) in favor of the
20 Internal Revenue Service which is probably in the amount of \$0
21 and is disputed in its entirety by the Debtor as being owed by
22 her ex-husband and/or a corporation, not her, and therefore
23 improperly recorded against the Home.

24 - The lien (reference number 27) in favor of the
25 Internal Revenue Service which is probably in the amount of \$0

1 and is disputed in its entirety by the Debtor as being owed by
2 her ex-husband and/or a corporation, not her, and therefore
3 improperly recorded against the Home.

4 - The lien (reference number 28) in favor of the
5 Internal Revenue Service which does not assert any claim and is
6 disputed in its entirety by the Debtor as being owed by her ex-
7 husband and/or a corporation, not her, and therefore improperly
8 recorded against the Home.

9 - The lien (reference number 40) in favor of the EDD
10 which is disputed in its entirety by the Debtor as being owed by
11 her ex-husband and/or a corporation, not her, and therefore
12 improperly recorded against the Home.

13 29. I submit that the compelling circumstances surrounding
14 my proposed sale of the Home are evident and are the best way to
15 maximize the distribution to creditors in this case. I have
16 been involved in this case in an effort to authenticate the
17 Debtor's painting and to sell the Home for nearly 1.5 years,
18 during which time I have expended many thousands of dollars of
19 my own money and I have not been paid any money by the Debtor or
20 her estate. Creditors have not been paid any money and the
21 amount of the senior indebtedness owing against the Home to Bank
22 of America simply continues to increase on a daily basis.

24 30. Nothing would be served by not selling the Home as the
25 Debtor's Chapter 11 case will simply be converted to Chapter 7
at which point Bank of America will assuredly obtain relief from

1 the automatic stay and foreclose on the Home leaving no value
2 for any other creditor and no value for the Debtor, me or LNBRB.

3 I declare under penalty of perjury that the foregoing is
4 true and correct to the best of my knowledge.

5 Executed on this 12th day of March, 2004, at San Jose,
6 California.

7
8 
9 _____
10 GREGORY STERLING, Declarant
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